

(j) *Stand-Alone Contracts* means contracts between the Licensee and a Provider in which the only content licensed to the Provider is the Service.

**§ 383.3 Royalty fees for public performances of sound recordings and the making of ephemeral recordings.**

(a) *Royalty rates.* Royalty rates for the public performance of sound recordings by eligible digital transmissions made over a Service pursuant to 17 U.S.C. 114, and for ephemeral recordings of sound recordings made pursuant to 17 U.S.C. 112 to facilitate such transmissions, are as follows. Each Licensee will pay, with respect to content covered by the License that is provided via the Service of each such Licensee:

(1) For Stand-Alone Contracts, the greater of:

(i) 15% of Revenue, or

(ii) The following monthly minimum payment per Subscriber to the Service of such Licensee—

(A) From inception through 2006: \$0.0075

(B) 2007: \$0.0075

(C) 2008: \$0.0075

(D) 2009: \$0.0125

(E) 2010: \$0.0150 and

(2) For Bundled Contracts, the greater of:

(i) 15% of Revenue allocated to reflect the objective value of the Licensee's Service, or

(ii) The following monthly minimum payment per Subscriber to the Service of such Licensee:

(A) From inception through 2006: \$0.0220

(B) 2007: \$0.0220

(C) 2008: \$0.0220

(D) 2009: \$0.0220

(E) 2010: \$0.0250

(b) *Minimum fee.* Each Licensee will pay an annual, non-refundable minimum fee of one hundred thousand dollars (\$100,000), payable on January 31 of each calendar year in which the Service is provided pursuant to the section 112 and 114 statutory licenses, but payable pursuant to the applicable regulations for all years 2007 and earlier. Such fee shall be recoupable and credited against royalties due in the calendar year in which it is paid.

**§ 383.4 Terms for making payment of royalty fees.**

(a) Subject to the provisions of this section, terms governing timing and due dates of royalty payments, late fees, statements of account, audit and verification of royalty payments and distributions, cost of audit and verification, record retention requirements, treatment of Licensees' confidential information, distribution of royalties, unclaimed funds, designation and definition of the collection and distribution organization, and any definitions for applicable terms not defined herein and not otherwise inapplicable shall be those adopted by the Copyright Royalty Judges for subscription transmissions and the reproduction of ephemeral recordings by preexisting satellite digital audio radio services in Docket No. 2006-1 CRB DSTRA ("the SDARS Proceeding").

(b) Without prejudice to any applicable notice and recordkeeping provisions, statements of account shall not require reports of performances.

(c) If the Copyright Royalty Judges adopt reports of use regulations in the SDARS Proceeding, those regulations, if any, shall govern Licensees' obligations to report sound recordings used pursuant to this part, except that Licensees also shall report to SoundExchange which channels are transmitted by their respective Providers for all past, current and future periods. In the event that the Copyright Royalty Judges do not adopt reports of use regulations in the SDARS Proceeding, then reports of use provided by XM Satellite Radio, Inc. ("XM") and Sirius Satellite Radio, Inc. ("Sirius") for their use of sound recordings on their preexisting satellite digital audio radio services (as defined in 17 U.S.C. 114(j)(10)) shall be deemed to satisfy XM's and Sirius' obligations to report sound recordings used pursuant to this part, and MTV Networks shall provide census reporting, retroactive to the inception of its Service.